

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KASHARD OMAR BROWN,

Petitioner,

vs.

BRIAN E. WILLIAMS, et al.,

Respondents.

Case No. 2:11-CV-01058-JCM-(CWH)

ORDER

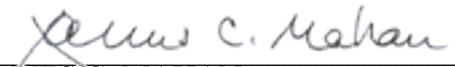
Petitioner has filed an amended petition (#31). The court has reviewed it pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The court will direct respondents to file a response, with one qualification.

In ground 3, petitioner claims that the admission of prior-bad-act evidence violated his state and federal constitutional rights. Petitioner divides ground 3 into two parts. The header for ground 3(a) indicates that it is a claim that the trial court abused its discretion when it admitted prior bad acts in violation of Nevada law. The header for ground 3(b) indicates that it is a claim that the ruling to admit the prior bad acts made the trial fundamentally unfair and denied petitioner due process of law. The substance of ground 3 does not match the structure that petitioner created for ground 3. Much of ground 3(a) contains descriptions of the prior-bad-act evidence. More importantly, petitioner has inserted into ground 3(a)(1) a claim that the Confrontation Clause of the Sixth Amendment was violated. Ground 3(b) contains arguments that the admission of prior-bad-act evidence violated both federal and state law. The court will not address petitioner's claims that the admission of prior-bad-act evidence violated state law, because the court can grant relief only on

1 finding that petitioner is in custody in violation of the Constitution or the laws of the United States.
2 28 U.S.C. § 2254(a). Even assuming that petitioner presented this claim to the Nevada Supreme
3 Court as an issue of federal law, the court can grant relief only if the evidentiary ruling made the
4 trial fundamentally unfair. Estelle v. McGuire, 502 U.S. 62, 67-68 (1991). Furthermore, the
5 Nevada Supreme Court's ruling would need to be contrary to, or an unreasonable application of,
6 clearly established federal law as determined by the Supreme Court of the United States. 28 U.S.C.
7 § 2254(d)(1). See also Alberni v. McDaniel, 458 F.3d 860, 866-67 (9th Cir. 2006). The court will
8 not dismiss part of ground 3 because the non-addressable claims and the addressable claims are
9 intertwined. Instead, respondents need not respond to any claims of a violation of purely state law,
10 and respondents will need to notice the Confrontation Clause claim in ground 3(a)(1).

11 IT IS THEREFORE ORDERED that respondents shall have forty-five (45) days from the
12 date of entry of this order to answer or otherwise respond to the amended petition (#31). If
13 respondents file and serve an answer, then they shall comply with Rule 5 of the Rules Governing
14 Section 2254 Cases in the United States District Courts, and then petitioner shall have forty-five
15 (45) days from the date on which the answer is served to file a reply.

16 DATED March 22, 2012.

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19 JAMES C. MAHAN
United States District Judge